

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**ADRIAN MICHAEL FLORES**

**PLAINTIFF**

**VS.**

**NO. 5:17-CV-05063-TLB**

**COUNTY OF BENTON, ARKANSAS;  
JAMES CHAMBERLIN; BALTHAZAR  
MARTINEZ; ANDY J. LEE; DAVID  
CORDEIRO; JAMES JOHNSON;  
SCOTT SULLIVAN; et al.**

**DEFENDANTS**

**MOTION TO DISMISS**

Comes now Benton County, and for its Motion To Dismiss Plaintiff's Amended Complaint with prejudice, state the following:

1. Plaintiff filed a Complaint on April 10, 2017. Doc. 1.
2. Plaintiff then filed an Amended Complaint on July 5, 2017 along with a Motion For Extension of Time to File and Obtain Proper Service on Defendants. Docs. 5 & 6.
3. The Court granted in part and denied in part Defendant's Motion For Extension of Time. *See* Text Only Order on CM/ECF Docket. In particular, the Court "grant[ed] Plaintiff an additional 10 days to serve the Complaint beyond the deadline...", or by on or about July 19, 2017. *See* Docs. 5 & 6 and Text Order Only on CM/ECF Docket.
4. Plaintiff served a Summons and Amended Complaint on Benton County Prosecuting Attorney Nathan Smith's office on July 19, 2017. Doc. 11. Plaintiff filed an Affidavit of Service on "County of Benton" on July 21, 2017, confirming the above mentioned service. *Id.*
5. The Benton County Arkansas Judge is the proper agent for service of process of suits against Benton County. *See Johnson v. Williams*, 2008 U.S. Dist. LEXIS 61322, 2008 WL 3554949

(W.D. Ark. Aug. 12, 2008) (“The County Judge is the chief executive officer of the County, *McCuen v. Jackson*, 265 Ark. 819, 581 S.W.2d 326 (1979), and would be the proper person to be served with Summons for the County.”).

6. The Benton County Prosecuting Attorney, Nathan Smith, that was served with the Summons and Amended Complaint directed to “County of Benton” has filed a Motion to Dismiss and Brief in Support. Docs. 16 & 17. Benton County hereby adopts and incorporates by reference the arguments in Prosecuting Attorney Nathan Smith’s Motion To Dismiss and Brief in Support (Docs. 16 & 17) in support of dismissing Benton County.

7. Plaintiff did not perfect service of process of a proper Summons and Amended Complaint on the Benton County Arkansas Judge by the July 19, 2017 service deadline set by the Court and Benton County is entitled to a dismissal pursuant to Fed. Rule of Civ. Pro. 12(b) (4) (5) and Fed. Rule of Civ. Pro. 4(m). *See* Docs. 5 & 6 and Text Order Only on CM/ECF Docket.

WHEREFORE, Defendant, Benton County, prays that Benton County be dismissed from the case and for any and all other just and proper relief to which it may be entitled.

Respectfully submitted,

BENTON COUNTY, ARKANSAS

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notification of the same to the following CM/ECF user:

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